

**ARIZONA DEPARTMENT OF HEALTH SERVICES
DIVISION OF ASSURANCE AND LICENSURE
OFFICE OF ASSISTED LIVING LICENSURE
SUBSTANTIVE POLICY STATEMENT # SP-020-ALS-ALL**

DETERMINING ELIGIBILITY FOR EXEMPTION UNDER A.R.S. § 36-402(8)

The purpose of this substantive policy statement is to notify the public how the Department determines whether an establishment is eligible for exemption from licensing as an assisted living facility under A.R.S. § 36-402(8) as a “place[] that do[es] not purport to be [an] establishment[] that regularly provide[s] health related services and at which one or two persons receive health related services on a twenty-four hour basis.”

A.R.S. § 36-402(8) states that A.R.S. Title 36, Chapter 4 and the rules adopted by the Director pursuant to A.R.S. Title 36, Chapter 4 do not authorize the licensure, supervision, regulation, or control of “places that do not purport to be establishments that regularly provide health related services and at which one or two persons receive health related services on a twenty-four hour basis.”

Initially, the Department determines whether the establishment provides health-related services to only one or two persons on a twenty-four hour basis. An establishment that provides health-related services to more than two persons on a twenty-four hour basis is ineligible for the exemption.

Next, the Department determines whether the establishment purports to be an establishment that regularly provides health-related services. To determine whether an establishment purports to be an establishment that regularly provides health-related services, and thus is ineligible for the exemption, the Department considers whether the establishment:

1. Advertises its health-related services either explicitly or by implication;
2. Uses business cards that state or imply that the establishment provides health-related services;
3. Markets to individuals or populations that require health-related services or to organizations that cater to individuals or populations that require health-related services;
4. Uses a registry or broker to obtain residents who require health-related services; and
5. Replaces a resident receiving health-related services who leaves the establishment with another resident who requires health-related services.

If the Department determines that two or more of these factors are present, the Department considers the establishment to purport to be an establishment that regularly provides health-related services and thus to be ineligible for the A.R.S. § 36-402(8) exemption.

“Resident” means an individual who is not a relative of the caregiver.

This substantive policy is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.